Article 8. Financial Requirements

§66264.140. Applicability.

(a) The requirements of sections 66264.142, 66264.143 and 66264.147 apply to owners and operators of all hazardous waste facilities, as defined in section 66260.10, except as provided otherwise in this article.

(b) The requirements of sections 66264.144 and 66264.145 apply only to owners and operators of:

(1) hazardous waste facilities, which are disposal facilities, as defined in section 66260.10;

(2) for purposes of this article, a facility which utilizes a temporary waste pile, as defined in section 66260.10, and surface impoundments as defined in section 66260.10, shall be considered as a disposal site until the owner or operator has demonstrated to the satisfaction of the Department that all wastes have been removed from the site;

(3) tank systems that are required under section 66264.197 to meet the requirements for landfills; and

(4) Containment buildings that are required under section 66264.1102 to meet the requirements for landfills.

(c) States and the Federal government are exempt from the requirements of this article.

(d) For purposes of this article, state government shall not include municipal, local, city, county, city-county special district government or any subdivisions thereof.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25245 and 58012, Health and Safety Code; 40 CFR Section 264.140.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of Note filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of Note refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of Note refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(3), new subsection (b)(4) and amendment of Note refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order including amendment of subsection (b)(3), transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).
7. Change without regulatory effect amending subsection (b)(1) filed 8-15-97 pursuant to section 100, title 1, California Code of regulations (Register 97, No. 33).
8. Editorial correction of HISTORY 7 (Register 98, No. 42).
9. Change without regulatory effect redesignating subsection(c)(1) as subsection (d) filed 11—6—2002 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).

§66264.141. Definition of Terms As Used in This Article.

(a) The following terms, as defined in section 66260.10 are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

“Assets”

“Current assets”

“Current liabilities”

“Current plugging and abandonment cost estimate”

“Independently audited”

“Liabilities”

“Net working capital”

“Net worth”

“Substantial business relationship”

“Tangible net worth”

(b) In the liability coverage requirements the terms “bodily injury” and “property damage” as defined in section 66260.10 shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below and defined in section 66260.10 are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

“Accidental occurrence”

“Legal defense costs”

“Nonsudden accidental occurrence”

“Sudden accidental occurrence”

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.141.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§66264.142. Cost Estimate for Closure.

(a) The owner or operator shall prepare and submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in sections 66264.111 through 66264.115 and applicable closure requirements in sections 66264.178, 66264.197, 66264.228, 66264.258, 66264.280, 66264.310, 66264.351, 66264.601 through 66264.603, and 66264.1102.

(1) The estimate shall be submitted in accordance with sections 66270.10 and 66270.14. The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 66264.112(b)).

(2) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10.) The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate shall not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under section 66264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator shall not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under section 66264.113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66264.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 66264.143(f)(3). The adjustment shall be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted closure cost estimate.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25245, 58004, and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, and 25245 Health and Safety Code; 40 CFR Section 264.142.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Amendment of subsection (a) and Note filed 10-24-94 as an emergency; operative 10-24-94 (Register 94, No. 43).

A Certificate of Compliance must be transmitted to OAL by 2-20-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) and Note refiled 2-21-95 as an emergency; operative 2-21-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-21-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) and Note refiled 6-19-95 as an emergency; operative 6-19-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (a) and NOTE refiled 10-16-95 as an emergency; operative 10-16-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-13-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-94 order transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).
7. Amendment of subsections (a)(3)-(4) and NOTE filed 6-20-96; operative 7-20-96 (Register 96, No. 25).

§66264.143. Financial Assurance for Closure.

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (f) and (i) of this section or section 66264.146 of this article.

(a) Closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2)The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1), shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current closure cost estimate covered by the trust agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial RCRA permit, or ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund shall be made as follows:

(A) For existing facilities, the first payment shall be made at the time the trust fund is established; a receipt from the trustee for this payment shall be submitted by the owner or operator to the Department. The first payment shall be at least equal to the current closure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE-CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

(B) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for transfer, treatment, storage or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Department before this initial receipt of hazardous waste. The first payment shall be at least equal to the current closure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE-CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(C) If an owner or operator establishes a trust fund as specified in section 66265.143(a) of this division, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in subsection (a)(3) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to chapter 15 of this division. The amount of each payment must be determined by this formula:

$$\text{Next Payment} = CE-CV$$

Y

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or the full amount of the current closure cost estimate may be deposited at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this section or in section 66265.143 of this division, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection and section 66265.143, subsection (a) of this division, as applicable.

(6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before beginning final closure, the value of the trust fund shall equal the amount of the current closure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, reimbursements of such amounts may be withheld until the Department determines, in accordance with subsection (j) of this section that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, the Department shall provide the owner or operator with a detailed written statement of reasons.

(12) The Department shall agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates as required by subsection (a)(2) of this section;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond with prior written consent from the Department based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of closure.

(1) An owner or operator of a permitted facility, as defined in section 66260.10, may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (c). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust must meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement to show current closure cost estimates as required by subsection (a)(2) of this section;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund. For facilities that require a RCRA permit, the determination shall be made pursuant to Health and Safety Code Section 25187.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval from the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(d) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. An owner or operator of a new facility shall submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in (3) and (4) of this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current closure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the hazardous waste facility Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the letter of credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate following written approval from the Department.

(8) Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit. For facilities that require a RCRA permit, the determination shall be made pursuant to Health and Safety Code Section 25187.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section, and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (g) of this section. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction from the Department, to such party or parties as the Department specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department shall instruct the insurer to make reimbursements in such amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or are otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the Department may withhold reimbursements of such amounts as it deems prudent until it is determined, in accordance with subsection (j) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, the owner or operator will be provided a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) the permit is denied, terminated or revoked or a new permit is denied; or

(C) closure is ordered by the Department or any other State or Federal agency, U.S. district court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the

policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10) The Department shall give written consent to the owner or operator to terminate the insurance policy when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(f) Financial test and guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either subsection (f)(1)(A) or (B) of this section.

(A) The owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) The owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase “current closure and postclosure cost estimates” as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer. The phrase “current plugging and abandonment cost estimates” as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner or operator's official letterhead stationery, shall contain an original signature and shall be completed as specified in section 66264.151, subsection (f); and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of the company's latest completed fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such

reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation as defined in section 66260.10 of the owner or operator, a firm whose parent corporations is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor shall meet and comply with the requirements for owners or operators in subsections (f)(1) through (f)(8) of this section and shall comply with the terms of the guarantee. The guarantee shall be on the official letterhead stationery of the parent corporation. The guarantee shall contain an original signature which shall be formally witnessed or notarized, and the wording shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform final closure of a facility covered by the guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a), (b), (d), (e), and (i) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify the other as “excess” coverage. The Department may use any or all of the mechanisms to provide for closure of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use one or more of the financial assurance mechanisms specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Alternative Financial Mechanism for Closure Costs.

(1) An owner or operator of facilities which manage solely non-RCRA hazardous waste may establish financial assurance for closure by means of a financial mechanism other than as specified in subsections (a) through (f) of this section, provided that prior to its use the mechanism has been submitted to and approve by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (f) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) Certainty of the availability of funds for the required closure activities; and

(B) The amount of funds that will be made available. The Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of section 66264.143. The submission shall include the following information:

(A) name, address and telephone number of issuing institution; and

(B) hazardous waste facility identification number, name, address and closure cost estimate for each facility; and

(C) the amount of funds for closure to be assured for each facility by the proposed mechanism; and

(D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial mechanisms specified in subsections (a) through (f) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (f) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current closure cost estimate.

(j) Release of the owner or operator from the requirements of this section.

(1) Within 60 days after receiving certifications from the owner or operator and an independent professional engineer, registered in California, that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that they are no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that they are complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.143.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f), (f)(3)(A), and (f)(10)-(f)(10)(C) filed 8-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Change without regulatory effect amending subsections (a)(1)-(3), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (c)(5), (d)(1)-(2), (d)(3)(A), (d)(8), (e)(2), (e)(8)(C), (f)(2), (f)(3)(A) and (f)(10) filed 11-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
4. Change without regulatory effect amending subsection (e)(2) filed 10—22—2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
5. Change without regulatory effect amending section and Note filed 12-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§66264.144. Cost Estimate for Postclosure Care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under section 66264.228 and section 66264.258 to prepare a contingent closure and postclosure plan, shall prepare and submit to the Department a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in sections 66264.117 through 66264.120, 66264.228, 66264.258, 66264.280, 66264.310 and 66264.603.

(1) The postclosure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10).

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under section 66264.117.

(b) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66264.145. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in section 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this section. The inflation factor is the result of

dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate within 30 days after the Department has approved the request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in section 66264.144(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with section 66264.144(a) and (c) and, when this estimate has been adjusted in accordance with section 66264.144(b), the latest adjusted postclosure cost estimate.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.144.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§66264.145. Financial Assurance for Postclosure Care.

The owner or operator of a hazardous waste management unit subject to the requirements of section 66264.144 shall establish and demonstrate to the Department financial assurance for postclosure care in accordance with the approved postclosure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the following options as specified in subsections (a) through (f) and (i) of this section.

(a) Postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in section 66264.151, subsection (a)(1). The trust agreement shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund, or the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the “pay-in period.” The payments into the postclosure trust fund shall be made as follows.

(A) for an existing facility, the first payment shall be made at the time the trust fund is established; a receipt from the trustee for this payment shall be submitted by the owner or operator to the Department. The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE-CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

(B) for a new facility, the first payment shall be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Department before this initial receipt of hazardous waste. The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE-CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(C) if an owner or operator establishes a trust fund as specified in section 66265.145, subsection (a) of this division, and the value of that trust fund is less than the current postclosure cost estimate when a permit is awarded

for the facility, the amount of the current postclosure cost estimate still to be paid into the fund shall be paid in over the pay-in period as defined in subsection (a)(3) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to chapter 15 of this division. The amount of each payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE-CV}{Y}$$

where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the current postclosure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5) If the owner or operator establishes a postclosure trust fund after having used one or more alternate mechanisms specified in this section or in section 66265.145 of this division, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection as applicable.

(6) After the pay-in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) Before final postclosure occurs, the value of the trust fund shall equal the amount of the current postclosure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11) During the period of postclosure care, the Department shall approve a release of funds if the owner or operator demonstrates to the satisfaction of the Department that the value of the trust fund exceeds the remaining cost of postclosure care.

(12) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the owner or operator shall be provided with a detailed written statement of reasons.

(13) The Department shall agree to termination of the trust when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(b) Surety bond guaranteeing payment into a postclosure trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section to the Department for written approval within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases, the Department shall approve, in writing, a reduction of the penal sum to the amount of the current postclosure cost estimate if the owner or operator demonstrates to the satisfaction of the Department that the penal sum exceeds the current postclosure cost estimate.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of postclosure care.

(1) An owner or operator of a permitted facility, as defined in section 66260.10, may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (c). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(A) perform postclosure care in accordance with the postclosure plan and other requirements of the permit for the facility; or

(B) provide alternate financial assurance as specified in this section to the Department for written approval within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the Department that the owner or

operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, under the terms of the bond the surety shall perform postclosure care in accordance with the postclosure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the Department shall approve, in writing, a reduction of the penal sum to the amount of the current postclosure cost estimate if the owner or operator demonstrates to the satisfaction of the Department that the amount exceeds the current postclosure estimate.

(8) During the period of postclosure care, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the satisfaction of the Department that the amount exceeds the remaining cost of postclosure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Department has given prior written consent. The Department shall provide such written consent when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(11) The surety shall not be liable for deficiencies in the performance of postclosure care by the owner or operator after the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(d) Postclosure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. An owner or operator of a new facility shall submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund shall meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the trust agreement shall be submitted to the Department with the letter of credit; and

(B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

1. payments into the trust fund as specified in subsection (a) of this section;

2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3. annual valuations as required by the trust agreement; and

4. notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the Hazardous Waste Facility Identification Number, name, and address of the facility and the amount of funds assured for postclosure care of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current postclosure cost

estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the letter of credit may be reduced to the amount of the current postclosure cost estimate following written approval from the Department.

(8) During the period of postclosure care, the Department shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of postclosure care.

(9) Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11) The Department shall return the letter of credit to the issuing institution for termination when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(e) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3) The postclosure insurance policy shall be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in subsection (g) of this section. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure period begins. The policy shall also guarantee that once postclosure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(5) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department shall instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (e)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation shall be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the Department deems the facility abandoned; or

(B) the permit is denied, terminated or revoked or a new permit is denied; or

(C) closure is ordered by the Department or by any other state or federal agency, U.S. district court or other

court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(E) the premium due is paid.

(9) Whenever the current postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(11) The Department shall give written consent to the owner or operator that the insurance policy may be terminated when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements in accordance with subsection (j) of this section.

(f) Financial test and guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria of either subsections (f)(1)(A) or (f)(1)(B) of this section.

(A) the owner or operator shall have:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(B) the owner or operator shall have:

1. a current rating for his or her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least $10 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase “current closure and postclosure cost estimates” as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (section 66265.151, subsection (f)). The phrase “current plugging and abandonment cost estimates” as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner or operator's official letterhead stationery, and shall contain an original signature; and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused a belief that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This

information shall consist of all three items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall send notice to the Department of the intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after such occurrence.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) During the period of postclosure care, the Department shall approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of postclosure care.

(10) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (j) of this section.

(11) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation as defined in section 66260.10, of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner of operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(9) of this section and shall comply with the terms of the guarantee. The guarantee shall contain an original signature which shall be formally witnessed or notarized and the wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a), (b), (d), (e), and (i) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he or she may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify the other as “excess” coverage. The Department may use any or all of the mechanisms to provide for postclosure care of the facility.

(h) Use of a financial mechanism for multiple facilities for postclosure care. An owner or operator may use one or more of the financial assurance mechanisms specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for postclosure care of any of the facilities covered

by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Alternative Financial Mechanism for Postclosure Care.

(1) The owner or operator of facilities which solely manage non-RCRA hazardous waste may establish financial assurance for postclosure care by means of a financial mechanism other than as specified in subsections (a) through (f) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (f) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required postclosure care activities; and

(B) the amount of funds that will be made available;

(C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of section 66264.145. The submission shall include the following information:

(A) name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and

(C) the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and

(D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial assurance mechanisms specified in subsections (a) through (f) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (f) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current postclosure cost estimate.

(j) Release of the owner or operator from financial assurance requirements for postclosure care.

(1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that all postclosure care requirements have been completed for a hazardous waste disposal unit in accordance with the approved postclosure plan, the Department, at the request of the owner or operator, shall notify the owner or operator in writing that maintenance of financial assurance is no longer required for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

(2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that the owner or operator is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for postclosure care of that particular facility.

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.145.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f), (f)(3)(A), and (f)(11)-(f)(11)(C) filed 8-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Change without regulatory effect amending subsections (a)(2), (b)(2), (b)(3)(A), (c)(2), (c)(3)(A), (d)(2), (d)(3)(A), (e)(2), (f)(1), (f)(2), (f)(3)(A) and (f)(11) filed 11-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
4. Change without regulatory effect amending subsection (e)(2) filed 10—22—2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 43).
5. Change without regulatory effect amending subsection (f)(11) filed 1-13-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 2).
6. Change without regulatory effect amending section and Note filed 12-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).

§66264.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care.

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, corporate guarantee, or alternative mechanism, that meets the specifications for the mechanism in both section 66264.143 and section 66264.145. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure

and of post-closure care.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25425, Health and Safety Code; 40 CFR Section 264.146.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§66264.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (a)(1) through (7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify the other assurance as “excess” coverage.

(7) An owner or operator may meet the requirements of this section by obtaining an alterative financial mechanism, as described in subsection (k) of this section; or

(8) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability provided by a financial instrument authorized by subsections (a)(1) through (a)(7) of this section, or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (a)(1) through (a)(7) of this section; or

(C) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsection (a)(1) through (a)(7) of this section.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment as defined in section 66260.10, landfill, as defined in section 66260.10, land treatment facility as defined in section 66260.10 or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3

million per occurrence, as defined in section 66260.10, with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by obtaining liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the Department, the owner or operator shall provide a copy of the insurance policy; the copy of the insurance policy shall contain original signatures.

(C) The wording of the liability endorsement shall be identical to the wording specified in section 66264.151, subsection (i). The liability endorsement shall contain original signatures and shall be submitted to the Department.

(D) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (j). The certificate of insurance shall contain original signatures and shall be submitted to the Department.

(E) An owner or operator of a new facility shall submit the liability endorsement or certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a payment bond for liability coverage as specified in subsection (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through use of the combinations of insurance, financial test, guarantee, letter of credit, payment bond and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify another assurance as “excess” coverage.

(7) An owner or operator may meet the requirements of this section by obtaining an alternative financial mechanism, as described in subsection (k) of this section.

(8) An owner or operator shall notify the Department in writing within 30 days whenever:

(A) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by subsections (b)(1) through (b)(7) of this section, or

(B) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste transfer, treatment, storage or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (b)(1) through (b)(7) of this section; or

(C) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (b)(1) through (b)(7) of this section.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by subsection (a) or (b) of this section are not consistent with the degree and duration of risk associated with transfer, treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance shall be submitted to the Department as part of the application under section 66270.14 of this division for a facility that does not have a permit, or pursuant to the procedures for permit modification under section 66271.4 of this division for a facility that has a permit. If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by subsection (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under section 66270.41, subsection (a)(5) and section 66271.4.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by subsection (a) or (b) of this section are not consistent with the degree and duration of risk associated with transfer, treatment, storage or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under subsection (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level shall be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Department shall require that an owner or operator of the facility comply with subsection (b) of this section. An owner or operator shall furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under section 66270.41, subsection (a)(5) and section 66271.4.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B).

(A) The owner or operator shall have:

1. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

2. tangible net worth of at least $10 million; and

3. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(B) The owner or operator shall have:

1. a current rating for the most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth of at least $10 million; and

3. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

4. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase “amount of liability coverage” as used in subsection (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (g). The letter shall be on the official letterhead stationary of the owner or operator, and shall contain an original signature. An owner or operator may use the financial test to demonstrate both assurance for closure or postclosure care, as specified by sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143, subsection (e) and 66265.145, subsection (e), and liability coverage as specified in subsections (a) and (b) of this section. If an owner or operator is using the financial test to cover both forms of financial responsibility, a separate letter is not required;

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year;

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, liability coverage shall be obtained for the entire amount of coverage as described in this section by use of the financial mechanisms described in this section. Notice shall be sent to the Department of the owner's or operator's intent to

obtain the required coverage; notice shall be sent by either registered mail or by certified mail within 90 days after any occurence that prevents the owner or operator from meeting the test requirements. Evidence of liability coverage shall be submitted to the Department within 90 days after any occurrence that prevents the owner or operator from meeting the requirements.

(7) The Department may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance for closure and postclosure care and evidence of the required liability coverage as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of liability coverage for the amount required as specified in this section within 30 days after notification of disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance for closure and postclosure care and evidence of liability insurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with sections 66264.143, subsection (j), 66264.145, subsection (j) and 66264.147, subsection (f).

(g) Guarantee for liability coverage.

(1) Subject to subsection (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as “guarantee.” The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(6) of this section. The wording of guarantee shall be identical to the wording specified in section 66264.151, subsection (h)(2) and shall have original signatures. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter shall describe this “substantial business relationship” and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the Department approve(s) alternate liability coverage complying with section 66264.147 and/or section 66265.147.

(2)(A) In the case of corporations incorporated in states other than California, a guarantee may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of;

1. the State in which the guarantor is incorporated, and

2. each state in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that State.

(B) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if;

1. the non-U.S. corporation has identified a registered agent for service of process in the State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and

2. the Attorney General or Insurance Commissioner of the State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in this State.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit shall be identical to the wording specified in section 66264.151, subsection (k) of this article. The letter of credit shall contain original signatures and shall be accompanied by a letter

from the owner or operator referring to the letter of credit by number, issuing institution, effective date, and providing the following information: the hazardous waste facility identification number, name and address of the facility, and the amount of funds assured for valid third party liability claims of the facility by the letter of credit.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. This standby trust fund shall meet all of the requirements of the trust fund specified in subsection (j) of this section.

(5) The wording of the standby trust fund shall be identical to the wording specified in section 66264.151, subsection (n).

(6) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(7) The letter of credit shall be issued in an amount at least equal to the required per occurrence and annual aggregate amount for sudden, or nonsudden, or sudden and nonsudden liability coverage, except as provided in subsection (b)(7) of this section.

(i) Payment bond for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining a payment bond that conforms to the requirements of this subsection and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the payment bond shall be identical to the wording specified in section 66264.151, subsection (*l*). The payment bond shall contain original signatures.

(4) A payment bond may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of

(A) the State in which the surety is incorporated, and

(B) each State in which a facility covered by the payment bond is located have submitted a written statement to the Department that a payment bond executed as described in this section is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection by submitting an originally signed duplicate of the trust agreement and a formal certification of acknowledgment to the Department.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust agreement shall be identical to the wording specified in section 66265.151, subsection (m).

(k) Liability Coverage--Alternative Mechanism.

(1) An owner or operator of facilities which manage solely non-RCRA hazardous waste may demonstrate the required liability coverage by means of a mechanism other than as specified provided that prior to its use the proposed mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the mechanisms specified in subsections (a), (b), (f) through (j) of this section. The Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required liability coverage; and

(B) the amount of funds that will be made available; and

(C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the alternate mechanism be considered acceptable for meeting the requirements of subsections (a) and (b) of this section. The submission shall include the following information:

(A) the name, address and phone number of the issuing institution; and

(B) hazardous waste facility identification number, name, address and the amount of liability coverage to be

provided for each facility; and

(C) the terms of the proposed mechanism (period of coverage, renewal/extension, cancellation).

(3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the other mechanisms specified in subsections (a), (b), (f) through (j) of this section.

(4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5) If a proposed mechanism is found acceptable except for the amount of coverage, the owner or operator shall either increase the coverage or obtain other liability coverage as specified in subsections (a) and (b) of this section. The amount of coverage available through the combination of mechanisms shall at least equal the amounts required by subsections (a) and (b) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40 CFR Section 264.147.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).
2. Change without regulatory effect amending section filed 8-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 33).
3. Amendment of Note filed 10-13-98; operative 11-12-98 (Register 98, No. 42).
4. Amendment of subsections (a) and (b) and amendment of Note filed 10-19-98; operative 11-18-98 (Register 98, No. 43).
5. Change without regulatory effect amending subsections (b)(3), (f)(3)-(f)(3)(B), (g)(3)(A), (g)(8), (g)(10)(B), (h)(1), (h)(2)(A)-(b), (l)(2)-(3), (l)(4)(A), (l)(5), (j)(3)-(4), (k)(4), (*l*)(1), (*l*)(1)(B) and (*l*)(3) filed 11-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 45).
6. Change without regulatory effect amending subsection (b)(3) filed 7—1—2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).
7. Change without regulatory effect amending section filed 12-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).
8. Change without regulatory effect amending subsection (g)(1) filed 3-20-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 12).

§66264.148. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in section 66264.143(f) and section 66264.145(f) shall make such a notification if named as debtor, as required under the terms of the corporate guarantee (section 66264.151(h)).

(b) An owner or operator who fulfills the financial assurance or liability coverage requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.148.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§66264.151. Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in section 66264.143, subsection (a) or section 66264.145, subsection (a) or section 66265.143, subsection (a) or section 66265.145, subsection (a) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of State]" or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility/transportable treatment unit (TTU) shall provide assurance that funds will be available when needed for closure and/or postclosure care of the facility/TTU,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities/TTUs identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs and Cost Estimates. This Agreement pertains to the facilities/TTUs and cost estimates identified on attached Schedule A. [on Schedule A for each facility/TTU list the hazardous waste facility/TTU EPA Identification Number, name, address, and the current closure and/or postclosure cost estimates (Indicate the closure and postclosure amounts separately), or portions thereof, for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund" for the benefit of the Beneficiary. The Grantor and the Trustee intend that no third party has access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Beneficiary.

Section 4. Payment for Closure and Postclosure Care. The Trustee shall make payments from the Fund as the Beneficiary shall direct, in writing, to provide for the payment of the costs of closure and/or postclosure care of the facilities/TTUs covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Beneficiary from the Fund for closure and postclosure expenditures in such amounts as the Beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Beneficiary specifies in writing. Upon refund, such funds shall not constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii)The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a-1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in

the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and Beneficiary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Beneficiary, by certified mail within 10 days following the expiration for the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the

laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (a)(1) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.140 through 66264.148 and sections 66265.140 through 66265.148.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund as specified in section 66264.143, subsection (a) and section 66264.145, subsection (a) or section 66265.143, subsection (a) or section 66265.145, subsection (a) of this division. State requirements may differ on the proper content of this acknowledgment.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 66264.143, subsection (b) or section 66264.145, subsection (b) or section 66265.143, subsection (b) or section 66265.145, subsection (b) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or postclosure amount(s) for each facility/transportable treatment unit (TTU) guaranteed by this bond [indicate closure and postclosure amounts separately]:

Total penal sum of bond: $

Surety's bond number:

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the Department of Toxic Substances Control, of the State of California (hereinafter called DTSC) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under state regulations, to have a permit or interim status in order to own or operate each hazardous waste management facility/TTU identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit or interim status, and

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility/TTU identified above, fund the standby trust fund in the amount(s) identified above for the facility/TTU,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by DTSC or a U. S. District Court or other court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance, as specified in California Code of

Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval from DTSC of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director of DTSC, or designee, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by DTSC that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies)/TTU(s) into the standby trust fund as directed by DTSC.

The liability of the Surety(ies) shall not be discharged by any payment of or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to DTSC, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DTSC, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from DTSC.

[The following paragraph is an optional rider that may be included, but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of DTSC.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (b), and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) A surety bond guaranteeing performance of closure and/or postclosure care, as specified in section 66264.143, subsection (c) or section 66264.145, subsection (c), shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address, and closure and/or postclosure amount(s) for each facility/transportable treatment unit (TTU) guaranteed by this bond [indicate closure and postclosure amounts separately]:
Total penal sum of bond: $
Surety's bond number:

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the Department of Toxic Substances Control of the State of California (hereinafter called DTSC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under state regulations, to have a permit in order to own or operate

each hazardous waste management facility/TTU identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit, and

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility/TTU for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

AND, if the Principal shall faithfully perform postclosure care of each facility/TTU for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

OR, if the Principal shall provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, and obtain written approval from DTSC of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director of DTSC, or designee, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by DTSC that the Principal has been found in violation of applicable closure requirements, as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, for a facility/TTU for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility/TTU into the standby trust fund as directed by DTSC.

Upon notification by DTSC that the Principal has been found in violation of the postclosure requirements, as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, for a facility/TTU for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility/TTU into the standby trust fund as directed by DTSC.

Upon notification by DTSC that the Principal has failed to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14, article 8, and obtain written approval of such assurance from DTSC during the 90 days following receipt by both the Principal and DTSC of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies)/TTU(s) into the standby trust fund as directed by DTSC.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to DTSC provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and DTSC, as evidenced the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by DTSC.

[The following paragraph is an optional rider that may be included, but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission from DTSC.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (c) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14, article 8, sections 66264.143 and 66264.145.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $

[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(d) A letter of credit, as specified in section 66264.143, subsection (d) or section 66264.145, subsection (d) or section 66265.143, subsection (c) or section 66265.145, subsection (c) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Date:
Irrevocable Standby Letter of Credit No.:

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert number] in your favor at the request and for the account of [insert owner's or operator's name and address] up to the aggregate amount of [amount in words] U.S. dollars $ [insert dollar amount], available upon presentation of:

1. your sight draft bearing reference to this letter of credit No. [insert number], and
2. your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of the California Hazardous Waste Control Law."

An owner or operator who uses a letter of credit to satisfy the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, shall also establish a standby trust agreement.

Each draft shall be marked "Drawn under [insert name of issuing institution] letter of credit No. [insert number] dated [insert date]".

Each draft shall also be accompanied by the original of this letter of credit upon which we may endorse our payment.

This letter of credit is effective as of [insert date] and shall expire on [insert date at least one year from effective date], but such expiration date shall be automatically extended for a period of at least [insert at least one year] on [insert date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify both you and [insert owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [insert owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [insert owner's or operator's name] or in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (d) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 on the date shown below.

[Signature(s) of official(s) of issuing institution]
[Title(s) of official(s) of issuing institution]
[Address of official(s) of issuing institution]
[Date official(s) of issuing institution sign]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145, subsection (d) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"):
Name and Address of Insured (herein called the "Insured"):
Facilities Covered: [List for each facility/transportable treatment unit (TTU): The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for postclosure care (these amounts for all facilities covered shall total the face amount shown below).]
Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert “closure” or “closure and postclosure care” or “postclosure care”] for the facilities/TTU(s) identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as such regulations were constituted on the date shown below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except for failure to pay the premium, and that the automatic renewal of the policy provides the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the policy, the Insurer will send notice by either registered or certified mail to the owner or operator and the Department of Toxic Substances Control (DTSC). Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the owner or operator and the DTSC as evidence by the return receipt. Cancellation, termination or failure to renew will not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The DTSC deems the facility/TTU abandoned; or

(2) The permit is terminated or revoked or a new permit is denied by the DTSC; or

(3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of competent jurisdiction; or

(4) The owner or operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U. S. Code; or

(5) The premium due is paid.

Whenever requested by the Department of Toxic Substances Control (DTSC) of the State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original policy listed above, including all endorsements thereon.

In the event this policy is used in combination with another mechanism, this policy shall be considered [insert "primary" or "excess"] coverage.

The parties below certify that the wording of this certificate is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (e) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

(f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

I am the chief financial officer of [insert name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or postclosure costs, as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facilities/transportable treatment units (TTU) and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. This firm is the owner or operator of the following facilities/TTUs for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:_____.

2. This firm guarantees, through the guarantee specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:_____.

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following

value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

3. In states where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265 or California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:_____.

4. This firm is the owner or operator of the following hazardous waste management facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5, chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:_____.

5. This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

This firm [insert "is" or "is not"] required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [insert month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [insert date].

This firm is using [insert "Alternative I" or “Alternative II”].

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this division are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimate (total of all cost estimates shown in the five paragraphs above) $_____
*2. Total liabilities (if any portion of the closure or postclosure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) $_____
*3. Tangible net worth $_____
*4. Net worth $_____
*5. Current assets $_____
*6. Current liabilities $_____
7. Net working capital (line 5 minus line 6) $_____
*8. The sum of net income plus depreciation, depletion, and amortization $_____
*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____
10. Is line 3 at least $10 million? [Yes/No]
11. Is line 3 at least 6 times line 1? [Yes/No]
12. Is line 7 at least 6 times line 1? [Yes/No]
*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 _____[Yes/No]
14. Is line 9 at least 6 times line 1? [Yes/No]
15. Is line 2 divided by line 4 less than 2.0? [Yes/No]
16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]
17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]

ALTERNATIVE II

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the five paragraphs above] $_____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
*5. Tangible net worth [if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____
7. Is line 5 at least $10 million? [Yes/No]
8. Is line 5 at least 6 times line 1? [Yes/No]
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 [Yes/No]
10. Is line 6 at least 6 times line 1? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (f) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature]

[Name]

[Title]
[Date]

(g) A letter from the chief financial officer, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

I am the chief financial officer of [insert firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert “and closure and/or postclosure care” if applicable] as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facility(ies)/transportable treatment unit (TTU) and liability coverage. If there are no facility(ies)/TTU(s) that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include the hazardous waste facility/TTU EPA Identification Number, name, and address, and current liability coverage (indicate sudden and nonsudden coverage amounts separately)].

The firm identified above is the owner or operator of the following facility(ies)/TTU(s) for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147:

The firm identified above guarantees, through the guarantee specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s) owned or operated by the following:

The firm identified above is [insert one or more: (1) the direct or higher tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and financial assurance for closure and/or postclosure care, fill in the following five paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None” in the space indicated. For each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure and/or postclosure or liability coverage is demonstrated through the financial test as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:

2. The firm identified above guarantees, through the guarantee as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e), the closure and/or postclosure care or liability coverage of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:

3. In States where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner, operator or guarantor is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a financial test equivalent or substantially equivalent to the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:

4. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency or a State through the financial test or any other financial assurance mechanism as specified in California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:

5. The firm is the owner or operator or guarantor of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as specified in 40 CFR144.62 are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [insert date]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [insert date].

This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this financial test includes closure and/or postclosure care, insert "Alternative I" or "Alternative II"] for Part B].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section 66264.147 or section 66265.147 are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
*2.	Current assets	$_____
*3.	Current liabilities	$_____
4.	Net working capital [line 2 minus line 3]	$_____
*5.	Tangible net worth	$_____
*6.	If less than 90 percent of assets are located in the United States, give total United States assets	$_____
7.	Is line 5 at least $10 million?	[Yes/No]
8.	Is line 4 at least 6 times line 1?	[Yes/No]
9.	Is line 5 at least 6 times line 1?	[Yes/No]
10.	Are at least 90 percent of assets located in the United States? If not, complete line 11.	[Yes/No]
11.	Is line 6 at least 6 times line 1?	[Yes/No]

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Current bond rating of most recent issuance and name of rating service	$_____
3.	Date of issuance of bond	$_____
4.	Date of maturity of bond	$_____
*5.	Tangible net worth	$_____
*6.	Total assets in the United States [required only if less than 90 percent of assets are located in the United States]	$_____
7.	Is line 5 at least $10 million?	[Yes/No]
8.	Is line 5 at least 6 times line 1?	[Yes/No]
*9.	Are at least 90 percent of assets located in the United States?	[Yes/No]
10.	Is line 9 at least 6 times line 1?	[Yes/No]

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147 are used.]

ALTERNATIVE I

1.	Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
*4.	Total liabilities (if any portion of your closure or postclosure cost estimate is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	$_____
*5.	Tangible net worth	$_____
*6.	Net worth	$_____
*7.	Current assets	$_____
*8.	Current liabilities	$_____
9.	Net working capital (line 7 minus line 8)	$_____
10.	The sum of net income plus depreciation, depletion, and amortization	$_____
*11.	Total assets in the United States (required only if less than 90 percent of firm's assets are located in the United States)	$_____
12.	Is line 5 at least $10 million?	[Yes/No]
13.	Is line 5 at least 6 times line 3?	[Yes/No]
14.	Is line 9 at least 6 times line 3?	[Yes/No]
*15.	Are at least 90 percent of the firm's assets located in the United States? If not, complete line 16	[Yes/No]
16.	Is line 11 at least 6 times line 3?	[Yes/No]
17.	Is line 4 divided by line 6 less than 2.0?	[Yes/No]
18.	Is line 10 divided by line 4 greater than 0.1?	[Yes/No]
19.	Is line 7 divided by line 8 greater than 1.5?	[Yes/No]

ALTERNATIVE II

1.	Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control	$_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____
3. Sum of lines 1 and 2 $_____
4. Current bond rating of most recent issuance and name of rating service: _____
5. Date of issuance of bond: _____
6. Date of maturity of bond: _____
*7. Tangible net worth (if any portion of the closure and post closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line.) _____
*8. Total assets in the United States (required only if less than 90 percent of firm's assets are located in the United States) $_____
9. Is line 7 at least $10 million? [Yes/No]
10. Is line 7 at least 6 times line 3? [Yes/No]
*11. Are at least 90 percent of the firm's assets located in the United States? If not, complete line 12. [Yes/No]
12. Is line 8 at least 6 times line 3? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (g) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature]
[Name]
[Title]
[Date]

(h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POSTCLOSURE CARE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made this [insert date] by [insert name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the Department of Toxic Substances Control (DTSC), obligee, on behalf of our subsidiary [insert owner or operator name and business address].

This guarantee is made on behalf of the [insert owner or operator name], which is [one of the following:" our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10”] to the DTSC.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e).

2. [Insert owner or operator's name] owns at least 50 percent of the voting stock of and/or operates the following hazardous waste management facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both. Include closure and postclosure amounts, shown separately.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 7, for the closure and postclosure care of facilities/TTU(s) as identified above.

4. For value received from [insert owner or operator name], guarantor guarantees to DTSC that in the event that [insert owner or operator name] fails to perform [insert "closure", "postclosure care" or “closure and postclosure care”] of the above facility(ies)/TTU(s) in accordance with the closure or postclosure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] in the amount of the current closure or postclosure cost estimates as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before the termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to DTSC and to [insert owner or operator name] that he or she intends to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 as applicable, in the name of [insert owner or operator name]. Within 120 days after the end of such fiscal year or other occurrence, the guarantor shall establish such alternate financial assurance unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by DTSC of a determination that guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or postclosure care, he or she shall establish alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] unless [insert owner or operator name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to California Code of Regulations, title 22, division 4.5.

9. Guarantor agrees to remain bound under this guarantee for as long as [insert owner or operator name] shall comply with the applicable financial assurance requirements of California Code of Regulations, title 22, division 4.5 for the above listed facilities/TTUs, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approve(s), alternate closure and/or postclosure care coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through either registered or certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor agrees that if [insert owner or operator name] fails to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval of such assurance from DTSC within 90 days after a notice of cancellation by the guarantor is received by DTSC from guarantor, guarantor shall provide such alternate financial assurance in the name of [insert owner or operator name].

12. Guarantor expressly waives notice of acceptance of this guarantee by DTSC or by [insert owner or operator name]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility/TTU permit(s).

The parties hereby certify that the wording of this guarantee is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (h)(1) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) A guarantee, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made by this [insert date] by [insert name of guaranteeing entity] a business corporation organized under the laws of [if incorporated within the United States, insert "the State of [insert name of State]"; if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [insert owner or operator name] of [insert business address] which is one of the following: [insert "our subsidiary"; "a subsidiary of [insert name and address of common parent corporation] of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operation of the facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

2. [Insert owner or operator name] owns or operates the following hazardous waste management facility(ies)/TTU(s) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's

registered agent in each State.]. This corporate guarantee satisfies California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, third-party liability requirements for [insert "sudden", "nonsudden" or “both sudden and nonsudden”] accidental occurrences in the above-named owner or operator facility(ies)/TTU(s) for coverage in the amount of $ [insert dollar amount] per facility/TTU per occurrence and $ [insert dollar amount] annual aggregate.

3. For value received from [insert owner or operator name], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility(ies)/TTU(s) covered by this guarantee that in the event that [insert owner or operator name] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" and/or "nonsudden"] accidental occurrences, arising from the operation of the above-named facility(ies)/TTU(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to the following:

(a) Bodily injury or property damage for which [insert owner or operator name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator name] under a workers' compensation, disability benefits, or unemployment compensation law or any similar laws.

(c) Bodily injury to:

(1) An employee of [insert owner or operator name] arising from, and in the course of, employment by [insert owner or operator name]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator name]. This exclusion applies:

(A) Whether [insert owner or operator name] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (A) and (B).

(d) Bodily injury or property, damages arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator name];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator name] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator name];

(4) Personal property in the care, custody, or control of [insert owner or operator name];

(5) That particular part of real property on which the [insert owner or operator name] or any contractor or subcontractors working directly or indirectly on behalf of the [insert owner or operator name] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the Department of Toxic Substances Control (DTSC) and to [insert owner or operator name] that he or she intends to provide alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, as applicable, in the name of [insert owner or operator name]. Within 90 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify the DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten (10) days after commencement of the proceedings.

7. Guarantor agrees that within thirty (30) days after being notified by the DTSC of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor, he or she shall establish alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 in the name of [insert owner/operator name], unless the [insert owner or operator name name] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, provided that such modification shall become effective only if DTSC does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [insert owner/operator name] shall comply with the applicable requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 for the above-listed facility(ies)/TTU(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator name]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC, and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approves alternate liability coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator].

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facility(ies)/TTU(s).

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party liability claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert principal name] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [insert "sudden" and/or "nonsudden"] accidental occurrence arising from operating [insert Principal's name and facility type(s) hazardous waste "treatment", "storage" or disposal" facility/transportable treatment unit (TTU)] should be paid in the amount of $ [insert dollars].

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility/TTU or group of facility(ies)/TTU(s).

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of this guarantee is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (h)(2) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness of notary:

(i) A hazardous waste facility liability endorsement as required in section 66264.147 or section 66265.147 shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the Insurer has issued liability insurance covering bodily injury and property damage to [name of insured], [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by the above policy is [insert “primary” or “excess”]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to conform with subsections (a) through (e). The Insurer certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU, will be effective only upon written

notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

Attached to and forming part of policy No. [insert policy number] issued by [insert name of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year] . The effective date of said policy is [insert day] day of [insert month].

I hereby certify that the wording of this endorsement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (i), is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(j) A certificate of liability insurance as required in section 66264.147 or section 66265.147 shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Insert name of Insurer], (the “Insurer”), of [insert address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [insert name of insured], (the “insured”), of [insert address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list EPA Identification Number, name, and address for each facility/TTU] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number [insert policy number], issued on [insert date]. The effective date of said policy is [insert date]. The coverage provided by the above policy is [insert “primary” or “excess”]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The Insurer further certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate of the original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the DTSC as evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (j), is being executed in accordance with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Date:

Irrevocable Standby Letter of Credit No.:

Department of Toxic Substances Control

Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert number] in favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [insert owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $ [insert dollar amount] per occurrence, and the annual aggregate amount of [in words] U.S dollars $ [insert dollar amount] for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $ [insert dollar amount] per occurrence, and the annual aggregate amount of [in words] U.S dollars $ [insert dollar amount] for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. [insert letter of credit number],and

[insert the following language if the letter of credit is being used without a standby trust fund:] "(1) A signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

The undersigned, as parties [insert principal name] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury [insert and/or] property damage caused by a [insert "sudden" or "nonsudden"] accidental occurrence arising from operations of [insert principal name] hazardous waste transfer, treatment, storage, or disposal facility should be paid in the amount of $ [insert dollar amount]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal name] is obligated to pay damages by reason of assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal name] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal name] arising from, and in the course of, employment by [insert principal name]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal name]. This exclusion applies:

(A) Whether [insert principal name] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented or occupied by [insert principal name];

(2) Premises that are sold, given away, or abandoned by [insert principal name] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal name];

(4) Personal property in the care, custody or control of [insert principal name];

(5) That particular part of real property on which [insert principal name] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal name] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor
[Signatures]
Claimant(s)

or (2) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from operation of the Grantor's facility/transportable treatment unit (TTU) or group of facilities/TTUs.

This letter of credit is effective as of [insert date] and shall expire on [insert date at least one year from effective date], but such expiration date shall be automatically extended for a period of [at least one year] on [insert date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Director of the Department of Toxic Substances Control, and [insert owner or operator name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Include the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (k) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 on the date shown below.

[Signature[s] of official[s] of issuing institution]

[Title[s] of official[s] of issuing institution]
[Address of official[s] of issuing institution]
[Date official[s] of issuing institution sign]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(*l*) A surety bond, as specified in section 66264.147, subsection (i) or section 66265.147, subsection (i) of this division, shall be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [insert number]

Parties [insert name and address of owner or operator], Principal, incorporated in [insert State of incorporation] of [insert city and State of principal place of business] and [insert name and address of surety company(ies)], Surety Company(ies), of [insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility/transportable treatment unit (TTU) guaranteed by this bond: [insert EPA Identification Number, name, and address for each facility/transportable treatment unit]

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence	[insert dollar amount]	[insert dollar amount]
Annual Aggregate	[insert dollar amount]	[insert dollar amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences (as identified above) arising from the operations of the facility/TTU or group of facilities/TTUs in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 25205 of the California Health and Safety Code.

(2) Rules and regulations of the Department of Toxic Substances Control (DTSC), California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, particularly sections 66264.147 or 66265.147.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences (as identified above) arising from operations of the facility/TTU or group of facilities/TTUs. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal name] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

1. An employee of [insert principal name] arising from, and in the course of, employment by [insert principal name]; or

2. The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal name]. This exclusion applies:

A. Whether [insert principal name] may be liable as an employer or in any other capacity; and

B. To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

1. Any property owned, rented, or occupied by [insert principal name];

2. Premises that are sold, given away or abandoned by [insert principal name] if the property damage arises out of any part of those premises;

3. Property loaned to [insert principal name];

4. Personal property in the care, custody or control of [insert principal name];

5. That particular part of real property on which [insert principal name] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal name] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third-party liability claim, as described above, the Surety(ies)

becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a ["sudden" or "nonsudden"] accidental occurrence arising from operating [principal's] hazardous waste transfer, treatment, storage, or disposal facility/TTU should be paid in the amount of $ [insert dollar amount].

[Signature]
Principal
[Notary]: Date:
[Signature]
Claimant(s):
[Notary]: Date:

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility/TTU or group of facilities/TTUs.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to DTSC forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the DTSC, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the DTSC, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the DTSC.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies), that the wording of this surety bond is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (*l*), and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

PRINCIPAL

[Signature(s)]:
[Name(s)]:
[Title(s)]:
[Corporate Seal]:

CORPORATE SURETY(IES)

[Name and address]:
State of Incorporation:
Liability Limit:
[Signature(s)]:
[Name(s) and title(s)]:
[Corporate Seal]:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(m)(1) A trust agreement, as specified in section 66264.147, subsection (j) or section 66265.147, subsection (j) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of State] " or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous

waste management facility/transportable treatment unit (TTU) or group of facilities/TTUs shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the operations of the facility/TTU or group of facilities/TTUs.

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities/TTUs identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs. This agreement pertains to the facilities/TTUs identified on the attached Schedule A [on Schedule A for each facility/TTU, list the EPA Identification Number, name, and address of the facility(ies)/TTU(s) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [“sudden” and/or “nonsudden”] accidental occurrences arising from operation of the facility(ies)/TTU(s) covered by this Guarantee, in the amounts of [up to one million dollars] per occurrence _____and [up to two million dollars] annual aggregate for sudden accidental occurrences and _____[up to three million dollars] per occurrence and _____[up to six million dollars] annual aggregate for non sudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefit, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor].

This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Beneficiary.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimants(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF VALID LIABILITY CLAIM

The undersigned, as parties [insert name of grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by [“sudden” or “nonsudden”] accidental occurrence arising from operating hazardous waste transfer, treatment, storage, or disposal

facility/TTU should be paid in the amount of $ [insert dollar amount].

[Signature]

[Grantor]

[Signature]

[Claimant(s)]

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility/TTU or group of facilities/TTUs.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii)The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a-1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and Beneficiary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this Trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the Trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the Trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Beneficiary.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Beneficiary will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Primary or Excess Coverage. In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (m) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature of Grantor]

[Title]

Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in section 66264.147, subsection (j) or section 66265.147, subsection (j) of this division. State requirements may differ on the proper content of this acknowledgement.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of [name of State]" or "a national bank"], the "Trustee."

WHEREAS, the Department of Toxic Substances Control (DTSC), a department of the State of California, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility/transportable treatment unit (TTU) or group of facilities/TTUs shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the operations of the facility/TTU or group of facilities/TTUs.

WHEREAS, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities/TTUs identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means the State of California, Department of Toxic Substances Control.

Section 2. Identification of Facilities/TTUs. This agreement pertains to the facilities/TTUs identified on the attached Schedule A [on Schedule A for each facility/TTU, list the EPA Identification Number, name, and address of the facility(ies)/TTU(s) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement]

Section 3. Establishment of Fund. The Grantor and Trustee hereby establish a standby trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [“sudden” and/or “nonsudden”] accidental occurrences arising from operation of the facility(ies)/TTU(s) covered by this Guarantee, in the amounts of [up to one million dollars] per occurrence and [up to two million dollars] annual aggregate for sudden accidental occurrences and [up to three million dollars] per occurrence and [up to six million dollars] annual aggregate for non sudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefit, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor].

This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities for of the Grantor established by the Beneficiary.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF VALID LIABILITY CLAIM

The undersigned, as parties [insert name of grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by ["sudden" or "nonsudden"] accidental occurrence arising from operating [insert name of grantor]'s hazardous waste treatment, storage, or disposal facility/TTU should be paid in the amount of $[insert dollar amount].

[Signature]

Grantor

[Signature]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility/TTU or group of facilities/TTUs.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of title 22, California Code of Regulations, section 66264.151, subsection (k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities/TTUs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code section 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(ii)The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 United States Code section 80a-1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private

sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee; the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, Beneficiary, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or Beneficiary, except as provided for herein.

Section 14. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of California.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the

interpretation or the legal efficacy of this Agreement.

Section 19. Primary or Excess Coverage. In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (n) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in section 66264.147, subsection (h) or section 66265.147, subsection (h) of this division. State requirements may differ on the proper content of this acknowledgement.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

NOTE: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.151.

HISTORY

1. Change without regulatory effect adopting section filed 12-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 51).
2. Change without regulatory effect amending subsection (c) filed 3-20-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 12).

